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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,620	07/07/2003	Eiji Murakami	P/3541-37	7497
2352 7590 12/23/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER ANDERSON, GREGORY A				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
12/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/614,620

**Applicant(s)**

MURAKAMI ET AL.

**Examiner**

GREGORY A. ANDERSON

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messerly 6,325,811 in view of Steinweg et al. 6,732,617.

Regarding claim 1: Messerly discloses an ultrasonic operating apparatus comprising: an elongate insert portion 150; an operating portion 180 located on a distal end portion of the insert portion; a handling portion 130 coupled to a proximal end portion of said insert portion, the handling portion having therein an ultrasonic vibrator; a covering tube 160 located around said insert portion; a vibration transmitting member 179 passed through the covering tube, the vibration transmitting member having an ultrasonic probe 88 on a side of said operating portion; a jaw 202 rockably supported opposite said ultrasonic probe and; a control handle 136 located in said handling portion and; and a handling force transmitting member 170 coupling said jaw and said control handle; and said jaw including a frame-shaped jaw body 202, and a tip 208 wherein the jaw body is provided at the end portion of the insert portion and is attached to the tip so as to rotate therewith. Messerly further discloses the ultrasonic probe having an asymmetric curved portion curved with respect to a central axis of said insert portion (Fig. 23). Messerly further discloses the curved portion being formed symmetrically with

respect to a direction in which said jaw is opened or closed (Fig. 23). Messerly further discloses the handle unit having a first handle 136 on a stationary side and a second handle 138 turnably mounted on the first handle, the vibrator unit and the probe unit being coupled with the first handle, respectively, and the operating unit being coupled with the second handle. Messerly further discloses the handle unit including an operating portion 136 for an operator to make operation; an insert sheath portion 160 having an elongated covering tube mounted on the operating portion; and a distal end acting portion 180 provided at a distal end of the insert sheath portion, the acting portion acting according to operation of the operating portion.

However, Messerly does not disclose the frame-shaped jaw body comprising supporting arms, each arm arranged on an opposite side of a slit extending in an axial direction of the insert portion and a joint portion removably coupling the tip between the supporting arms of the jaw body.

Steinweg et al. discloses supporting arms 44, each arm arranged on an opposite side of a slit extending in an axial direction of the insert portion and a joint portion 12 removably coupling the tip between the supporting arms of the jaw body (Fig. 5). Steinweg et al. further discloses a locking portion 26 operative to disengageably lock the seizing portion to the distal end acting portion, the locking portion being operative to release the seizing portion assembled with the distal end acting portion by using a dedicated tool 50 (Figs. 13-14). Steinweg et al. further discloses the locking portion including: a locking member 50 which utilizes elastic deformation for at least one of the distal end acting portion and the seizing portion; and a mechanism for locking both of

the distal end acting portion and the seizing portion by means of the locking portion and for suppressing the elastic deformation in a locked state (Figs. 13-14). Steinweg et al. further discloses the locking unit including a mechanism operable to lock both the jaw and the seizing portion by means of the locking portion and to suppress the elastic deformation in a locked state (Figs. 13-14).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Messerly with the arms and joint portion of Steinweg et al. in order to provide an easily attached and detached tip for a tool as taught by Steinweg et al. (Col. 1 ll. 33-35).

**3.** Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Messerly in view of Steinweg et al. and further in view of reversal of parts.

Messerly in view of Steinweg et al. discloses the invention essentially as claimed as discussed above. Steinweg et al. further discloses mounting holes (Fig. 4) into which the support shaft portions are removably inserted and guide grooves 48 (Fig. 7) for guiding the support shaft portions to the mounting holes, the grooves individually having taper surfaces for movement such that the space between the respective support shaft portions of the two supporting arms widens toward the mounting holes and click step (Figs. 13-14) portions for preventing the support shaft portions from slipping out of the mounting holes.

However, Messerly in view of Steinweg et al. disclose the jaw body having support arms that attach to the frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Messerly in view of Steinweg et al. by reversing the location of the support arms such that they lock into the jaw body instead of the frame since it has been held that the mere reversal of two components where the function of the two components is not lost is obvious; *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955).

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-4 and 6-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY A. ANDERSON whose telephone number is (571)270-3083. The examiner can normally be reached on Mon-Thurs 9:30am-3:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory A Anderson/

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773